

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Frederick Leroy Crandall,

Crim. No. 02-190 (PAM)

Petitioner,

v.

ORDER

United States of America,

Respondent.

This matter is before the Court on Petitioner's Rule 59(e) Motion to Alter or Amend the Court's Order denying his Motion to Vacate under 28 U.S.C. § 2255. (Docket No. 38.) After initial briefing on the Motion, the Court ordered the Government to file a more fulsome response to the Motion, addressing the applicability of Mathis v. United States, 136 S. Ct. 2243 (2016), to the Motion. The Government filed that response on October 31, 2016. (Docket No. 52). Petitioner has not responded to the Government's filing, and it appears that he has been released from incarceration.

The Government argues that Mathis does not alter this Court's determination that Petitioner was properly sentenced under the Armed Career Criminal Act. The Eighth Circuit has recently determined that Minnesota's third-degree burglary statute does not fit the generic definition of burglary in the ACCA. United States v. McArthur, 836 F.3d 931, 942 (8th Cir. 2016). Thus, the Court must evaluate Petitioner's prior burglary convictions using the modified categorical approach. Descamps v. United States, 133 S. Ct. 2276, 2283 (2013); see also Shepard v. United States, 544 U.S. 13, 26 (2005) (setting forth documents appropriately used to determine basis for underlying ACCA predicate conviction).

The Shepard documents attached to the Government's brief establish that Petitioner's prior convictions fit within the generic definition of burglary and are thus ACCA predicate offenses. Petitioner was properly sentenced under the ACCA and his Rule 59 Motion is therefore denied.

Accordingly, **IT IS HEREBY ORDERED that** the Motion to Alter or Amend Judgment (Docket No. 40) is **DENIED**.

Dated: December 22, 2016

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge